

HOUSE BILL NO. 650

INTRODUCED BY J. FRENCH

A BILL FOR AN ACT ENTITLED: "AN ACT CREATING THE MINERAL LEASE CONVEYANCE BACKUP WITHHOLDING ACT; PROVIDING DEFINITIONS; REQUIRING MINERAL LEASEHOLD INTEREST PURCHASERS TO WITHHOLD TAXES ON PAYMENTS FOR MINERAL LEASEHOLD INTERESTS; PROVIDING EXCEPTIONS TO THE WITHHOLDING TAX; MAKING MINERAL LEASEHOLD INTEREST PURCHASERS LIABLE FOR PAYMENT OF WITHHOLDING TAXES; PROVIDING A WITHHOLDING TAX RATE AND REMITTANCE SCHEDULE; REQUIRING MINERAL LEASEHOLD INTEREST PURCHASERS TO PROVIDE ANNUAL STATEMENTS TO MINERAL LEASEHOLD CONVEYORS AND THE DEPARTMENT OF REVENUE; PROVIDING FOR PENALTIES, INTEREST, AND REMEDIES; REQUIRING THE REPORTING OF TRANSFERS OF MINERAL INTERESTS UNDER THE REALTY TRANSFER ACT; AMENDING SECTIONS 15-7-303 AND 15-7-304, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE AND AN APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. Short title. [Sections 1 through 11] may be cited as the "Mineral Lease Conveyance Backup Withholding Act".

NEW SECTION. Section 2. Definitions. As used in [sections 1 through 11], the following definitions apply:

(1) "Convey" means to lease the right to develop the mineral interest to another party.

(2) "Gain" means the difference between the amount paid for the mineral leasehold interest by a mineral leasehold conveyor and the amount received from the mineral leasehold interest purchaser by the mineral leasehold interest conveyor.

(3) "Mineral" has the meaning provided in 15-38-103.

(4) "Mineral leasehold interest" means a contractual right to exploit, mine, produce, or develop a mineral.

(5) "Mineral leasehold interest conveyor" means an individual, entity, or trust that conveys a mineral leasehold to a mineral leasehold interest purchaser.

(6) "Mineral leasehold interest purchaser" means an individual, entity, or trust that purchases a mineral leasehold.

NEW SECTION. Section 3. Withholding required on payments to mineral leasehold conveyors.

Except as provided in [section 4], each mineral leasehold interest purchaser shall withhold from any payment for the conveyance of a mineral leasehold interest made to a mineral leasehold interest conveyer an amount equal to:

- (1) 6% of the purchase price of the mineral leasehold interest conveyed; or
- (2) 6% of the gain payable to the mineral leasehold interest conveyer for a subsequent conveyance.

NEW SECTION. Section 4. Withholding -- not required under certain conditions. (1) The provisions of [sections 1 through 11] do not apply to payments to a mineral leasehold interest conveyer made by the mineral leasehold interest purchaser if the mineral leasehold interest conveyer is:

- (a) a resident of Montana;
- (b) the United States or an agency of the federal government, this state or a political subdivision of this state, or another state or a political subdivision of another state;
- (c) a federally recognized Indian tribe pursuant to a lease entered into under the Indian Mineral Leasing Act of 1938, 25 U.S.C. 396a through 396g;
- (d) the United States as trustee for individual Indians;
- (e) an organization that is exempt from taxation under 15-31-102;
- (f) the same person or entity as the mineral leasehold interest purchaser;
- (g) a domestic corporation;
- (h) a domestic limited partnership;
- (i) a domestic limited liability company; or
- (j) a domestic limited liability partnership.

(2) If the payment for the conveyance of a mineral leasehold interest made by a mineral leasehold interest purchaser that is subject to withholding under the provisions of [sections 1 through 11] is less than \$166 for the current withholding period or is less than \$2,000 if the payment is annualized, then the department may grant a mineral leasehold interest purchaser's request to forego withholding the tax from the payment made for the leasehold mineral interest for the current withholding period or, if applicable, the payments made for the

1 leasehold mineral interest for the annual period.

2
3 **NEW SECTION. Section 5. Mineral leasehold interest purchaser liable for withholding taxes and**
4 **statements -- liability mitigation -- sufficiency of mailing address.** (1) Each mineral leasehold interest
5 purchaser is liable for the payment required by [section 6], the amount required to be deducted and withheld
6 under [sections 1 through 11], and the annual statements required by [sections 1 through 11]. The payments
7 required by [section 6] and the amounts required to be deducted and withheld, plus penalty and interest due, are
8 a tax. With respect to the tax, the mineral leasehold interest purchaser is the taxpayer.

9 (2) The officer of a corporation whose responsibility it is to collect, truthfully account for, and pay to the
10 state the amounts withheld from payments pursuant to this part and who fails to pay the withholdings is liable to
11 the state for the amounts withheld and the penalty and interest due on the amounts.

12 (3) (a) Subject to subsections (3)(b) and (6), each officer of the corporation is individually liable, along
13 with the corporation, for filing statements, to the extent that the officer has access to the requisite records, and
14 for unpaid taxes, penalties, and interest upon a determination that the officer:

15 (i) possessed the responsibility to file statements and pay taxes on behalf of the corporation; and

16 (ii) possessed the responsibility on behalf of the corporation for directing the filing of tax statements or
17 the payment of other corporate obligations and exercised that responsibility, resulting in the corporation's failure
18 to file statements required by [sections 1 through 11] or to pay taxes due as required by [sections 1 through 11].

19 (b) If a corporate mineral leasehold interest purchaser violates the provisions of [sections 1 through 11],
20 the department shall first apply the provisions of [section 11] against the corporation. If the corporation fails to
21 remedy the violation, then the department shall apply the provisions of [section 11] against each responsible
22 corporate officer as determined in subsections (3)(a) and (3)(c) of this section.

23 (c) In determining which corporate officer is liable, the department is not limited to considering the
24 elements set forth in subsection (3)(a) to establish individual liability and may consider any other available
25 information.

26 (4) In the case of a corporate bankruptcy, the liability of the individual remains unaffected by the
27 discharge of penalty and interest against the corporation. The individual remains liable for any statements and
28 for the amount of taxes, penalties, and interest unpaid by the corporation.

29 (5) Subject to subsection (6), for the purpose of determining liability for the filing of statements and the
30 payment of taxes, penalties, and interest owed under [sections 1 through 11]:

(a) each partner of a partnership is jointly and severally liable, along with the partnership, for any statements, taxes, penalties, and interest due while a partner;

(b) each member of a limited liability company that is treated as a partnership or as a corporation for income tax purposes is jointly and severally liable, along with the limited liability company, for any statements, taxes, penalties, and interest due while a member;

(c) the member of a single-member limited liability company that is disregarded for income tax purposes is jointly and severally liable, along with the limited liability company, for any statements, taxes, penalties, and interest due while a member; and

(d) each manager of a manager-managed limited liability company is jointly and severally liable, along with the limited liability company, for any statements, taxes, penalties, and interest due while a manager.

(6) The liability of an individual described in subsection (3) or (5) for taxes, penalties, and interest is released if and to the extent that the amount required to be deducted and withheld under [sections 1 through 11] is deposited in a separate account that is:

(a) established in a bank, as defined in 32-1-102, located in Montana;

(b) designated as a special fund in trust for the state; and

(c) payable to the department.

(7) If the mineral leasehold interest purchaser fails to deduct and withhold the amounts specified in [section 3] and the tax against which the deducted and withheld amounts would have been credited is paid, the amounts required to be deducted and withheld may not be collected from the mineral leasehold interest purchaser.

NEW SECTION. Section 6. Withholding schedule -- alternative schedules and methods -- records.

(1) Except as provided in subsection (2), each mineral leasehold interest purchaser shall file a return, on a form prescribed by the department, and remit to the department the amount of tax withheld on mineral leasehold conveyance payments within 30 days of the date of purchase.

(2) A mineral leasehold interest purchaser may request an alternative remittance schedule other than the schedule required by subsection (1). The department may consider situations such as administrative and taxpayer convenience and frequency of purchaser payments in determining whether to approve an alternative remittance schedule.

(3) If the department has reason to believe that collection of the amount of any tax withheld is in

1 jeopardy, it may proceed as provided in 15-1-703.

2 (4) Each mineral leasehold interest purchaser shall keep accurate payment and withholding records
3 containing the information that the department may prescribe by rule. Those records must be open to inspection
4 and audit and may be copied by the department or its authorized representative at any reasonable time and as
5 often as may be necessary. A mineral leasehold interest purchaser that maintains its records outside of Montana
6 shall furnish copies of those records to the department at the mineral leasehold interest purchaser's expense.

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8 **NEW SECTION. Section 7. Withholding of leasehold payments considered taxes collected.** The
9 amounts deducted and withheld from payments are considered taxes collected under the provisions of [sections
10 1 through 11]. A mineral leasehold interest conveyor does not have a right of action against the mineral leasehold
11 interest purchaser for any amount deducted and withheld from the payments and paid to the state in compliance
12 or intended compliance with [sections 1 through 11].

13
14 **NEW SECTION. Section 8. Annual withholding statement to mineral leasehold interest conveyor.**
15 Before January 31 of each year, each mineral leasehold interest purchaser shall furnish to each mineral leasehold
16 interest conveyor a statement, on a form prescribed by the department, that shows the total payments paid by
17 the mineral leasehold interest purchaser to the mineral leasehold interest conveyor during the preceding calendar
18 year and the amount of the tax deducted and withheld from the payments. The mineral leasehold interest
19 conveyor shall file a duplicate of the statement with the mineral leasehold interest conveyor's state income tax
20 return.

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22 **NEW SECTION. Section 9. Mineral leasehold interest purchaser to furnish annual statement to**
23 **department.** (1) On or before February 28 of each year, each mineral leasehold interest purchaser shall file with
24 the department a mineral leasehold conveyance payment and tax statement, on a form provided by the
25 department, that shows the total payments paid to each party subject to withholding during the preceding
26 calendar year or any portion of the preceding calendar year and the total amount of the tax deducted and withheld
27 from the payments under the provisions of [sections 1 through 11] for the same period.

28 (2) The annual statement filed by a mineral leasehold interest purchaser under this section complies with
29 the requirements of 15-30-301 relating to the duties of information agents. An additional information return is not
30 required with respect to a mineral leasehold conveyance payment.

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2 **NEW SECTION. Section 10. Withheld taxes held in trust for state.** Each mineral leasehold interest
3 purchaser that deducts and withholds the amounts under the provisions of [sections 1 through 11] shall hold the
4 amounts in trust for the state.

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6 **NEW SECTION. Section 11. Violations by mineral leasehold interest purchaser -- violations by**
7 **mineral leasehold interest conveyor -- penalties -- interest -- remedies.** (1) The department shall, as provided
8 in 15-1-216, add penalty and interest to the amount of all delinquent withholding taxes.

9 (2) A mineral leasehold interest purchaser that purposely fails to furnish the mineral leasehold
10 conveyance payment and tax statement required by [section 9] is subject to a penalty of \$50 for each failure, with
11 a minimum of \$1,000. The penalties imposed by this subsection are in addition to the penalties imposed by
12 15-1-216.

13 (3) Unless it is shown that the failure is due to reasonable cause, a mineral leasehold interest purchaser
14 that fails to withhold from any payments an amount required to be withheld under [section 3] or who fails to
15 transmit the withheld amounts to the department on or before the due date is liable for:

16 (a) the greater of the amount actually withheld or the amount of taxes due from the mineral leasehold
17 interest conveyor to whom the payments are made, but not more than the amount required to be withheld; and

18 (b) in addition to the penalties imposed under 15-1-216(2)(b), a penalty of not less than \$1,000 or more
19 than \$10,000. The department may bring an action as provided in subsection (4).

20 (4) A mineral leasehold interest conveyor who knowingly, as that term is defined in 45-2-101, executes
21 a false transfer certificate under 15-7-305 for the purpose of avoiding the withholding requirements of [section
22 3] is liable for a penalty of not less than \$1,000 or more than \$10,000. The department may bring an action in
23 the name of the state to recover the penalty and any delinquent taxes.

24 (5) All remedies available to the state for the administration, enforcement, and collection of income taxes
25 are available and apply to the tax required to be deducted and withheld under the provisions of [sections 1
26 through 11] unless otherwise specifically provided for in this part.

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28 **Section 12.** Section 15-7-303, MCA, is amended to read:

29 **"15-7-303. Definitions.** As used in this part, the following definitions apply:

30 (1) "Person" means an individual, corporation, partnership, or other business organization, trust,

1 fiduciary, or agent or any other party presenting a document for recordation.

2 (2) "Real estate" includes:

3 (a) land;

4 (b) growing timber;

5 (c) buildings, structures, fixtures, fences, and improvements affixed to land;

6 (d) mineral interests.

7 (3) (a) "Transfer" means an act of the parties or of the law by which the title to real ~~property~~ estate is
8 conveyed from one person to another.

9 (b) In the case of mineral interests, the term includes conveying the title to or the leasing of the right to
10 develop the mineral interest to another party.

11 (4) "Value" means the amount of the full actual consideration for real estate paid or to be paid, including
12 the amount of any lien or ~~liens~~ on the real estate."
13

14 **Section 13.** Section 15-7-304, MCA, is amended to read:

15 **"15-7-304. Report of transfers -- change of ownership records.** (1) All transfers of real ~~property~~
16 estate that are not evidenced by a recorded document, except those transfers otherwise provided for in this part,
17 must be reported to the department on ~~the a~~ form prescribed by the department.

18 (2) (a) The department is not required to change any ownership records used for the assessment or
19 taxation of real ~~property~~ estate unless the department has received a transfer certificate from the clerk and
20 recorder and the transfer has been reported to the department as provided by rule. If the grantor on the transfer
21 certificate is not the person to whom the property is assessed on the property tax record, the department may
22 not substitute the grantee's name on the certificate for the name of the current person listed on the property tax
23 record, but the department shall add the grantee's name to the property tax record with the name of the person
24 to whom the property is assessed.

25 (b) The department shall mail notification of the change to the person to whom the property is assessed
26 and to the grantee. The department shall substitute the grantee's name on the property tax record when reliable
27 evidence demonstrates that the grantee is the owner of the property for tax purposes."
28

29 NEW SECTION. **Section 14. Codification instruction.** [Sections 1 through 11] are intended to be
30 codified as an integral part of Title 15, chapter 30, part 2, and the provisions of Title 15, chapter 30, part 2, apply

1 to [sections 1 through 11].

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3 NEW SECTION. **Section 15. Effective date.** [This act] is effective January 1, 2010.

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5 NEW SECTION. **Section 16. Applicability.** [This act] applies to conveyances of mineral interests made
6 after December 31, 2009.

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